

## Message Text

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ORIGIN EB-07

INFO OCT-01 ARA-06 ISO-00 FEA-01 AGR-05 CEA-01 CIAE-00

COME-00 DODE-00 FRB-03 H-02 INR-07 INT-05 L-03 LAB-04

NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15 STR-04

ITC-01 TRSE-00 PRS-01 SP-02 OMB-01 NSCE-00 SSO-00

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TO AMEMBASSY BRASILIA IMMEDIATE

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E.O. 11652: N/A

TAGS: ETRD, BR

SUBJECT:COUNTERVAILING DUTY INVESTIGATION -- HANDBAGS  
FROM BRAZIL

REF: BRASILIA 1019

1. FOLLOWING IS THE TEXT OF A LETTER FROM DEPUTY ASSISTANT  
SECRETARY OF THE TREASURY PETER SUCHMAN TO FRANCISCO  
DORNELLES OF THE MINISTRY OF FINANCE. BEGIN TEXT:  
DEAR MR. DORNELLES:

I BELIEVE THERE MAY BE SOME MISUNDERSTANDING CONCERNING  
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OUR RECENT DETERMINATION IN THE LEATHER HANDBAG COUNTER-

VAILING DUTY INVESTIGATION. I UNDERSTAND THAT YOU HAVE INDICATED THAT YOU WERE MISLED AS TO TREASURY'S INTENTIONS IN THAT CASE. LET ME ASSURE YOU OF THE VALUE WE AT TREASURY PLACE ON THE CONTINUATION OF GOOD WORKING RELATIONS WITH YOU AND THE MINISTRY OF FINANCE. IT IS MY HOPE THAT THIS BREAKDOWN IN COMMUNICATIONS CAN BE SPEEDILY REPAIRED, AND I WOULD THEREFORE LIKE TO TAKE THIS OPPORTUNITY TO SET FORTH THE BASIS FOR OUR DETERMINATION, AND THE CONSIDERATIONS THAT LED US TO IT.

THE CALCULATIONS ON WHICH WE ESTABLISHED THE RATE OF

COUNTERVAILING DUTY IN THE HANDBAGS CASE WERE MADE IN THE SAME MANNER AS WERE THE CALCULATIONS IN THE FOOTWEAR INVESTIGATION. AS YOU KNOW, WE MAKE THESE CALCULATIONS, BASED ON DATA SUBMITTED BY THE GOVERNMENT OF BRAZIL, TO DETERMINE THE EXTENT TO WHICH BRAZILIAN EXPORT FIRMS ACTUALLY UTILIZE THE EXPORT INCENTIVES AVAILABLE TO THEM. WERE THE INFORMATION NOT AVAILABLE, WE WOULD BE COMPELLED UNDER THE TERMS OF OUR LAW TO COUNTERVAIL THE POTENTIAL BENEFITS RATHER THAN THE BENEFITS ACTUALLY RECEIVED. I AM SURE WE CAN AGREE THAT THIS WOULD BE UNFAIR AND WOULD UNNECESSARILY PENALIZE THE BRAZILIAN MANUFACTURERS AND EXPORTERS. THEREFORE, THE COOPERATION OF THE GOVERNMENT OF BRAZIL AND MINISTRY OF FINANCE HAS, I BELIEVE, GREATLY BENEFITED BRAZILIAN INTERESTS.

AS I UNDERSTAND IT, YOUR UNHAPPINESS WITH THE HANDBAG DETERMINATION CONCERNS THE 14 PERCENT RATE OF DUTY WHICH WAS ASSESSED AND OUR DEPARTURE FROM THE METHODOLOGY USED IN THE FOOTWEAR CASE. YOU WILL RECALL THAT IT WAS THE BRAZILIAN GOVERNMENT WHICH ORIGINALLY ASKED THAT WE AVOID A QUOTE FOOTWEAR TYPE DECISION END QUOTE IN THIS CASE AND TAT, IF AT ALL POSSIBLE, WE SET A SINGLE RATE IN THE HANDBAG DECISION. THE BRAZILIAN CALCULATIONS INDICATED THAT THE RATE SHOULD BE 11 PERCENT ON A WEIGHTED AVERAGE BASIS. THESE CALCULATIONS TOOK INTO ACCOUNT A QUOTE RECAPTURE END QUOTE OF INCENTIVES THROUGH INCOME TAXATION. AT THE TIME YOU CAME TO WASHINGTON IN OCTOBER 1975 TO DISCUSS THIS CASE, WE HAD ONLY JUST RECEIVED YOUR LIMITED OFFICIAL USE

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DATA AND WE HAD NOT YET MADE ANY CALCULATIONS OR ASSESSMENTS OF THE BRAZILIAN SUBMISSION. AT THAT TIME I EXPLAINED TO YOU, AS I HAD ON THE OCCASION OF OUR FIRST MEETING ON THIS CASE IN MARCH OF 1975, THAT OUR INTERPRETATION OF THE COUNTERVAILING DUTY LAW WOULD PRECLUDE US FROM TAKING INTO ACCOUNT QUOTE RECAPTURE END QUOTE, THAT IS THE AFTER TAX EFFECTS ON EXPORT INCENTIVES. I FURTHER INDICATED TO YOU THAT WE COULD NOT NECESSARILY ACCEPT

A WEIGHTED AVERAGE AND IN FACT NO AVERAGING WAS DONE IN THE FOOTWEAR CASE.

ON DECEMBER 5, 1975, I MET WITH MR. SCHIEVELBEIN OF THE GOB MINISTRY OF FINANCE AND MR. NOEL HEMMENDINGER, COUNSEL FOR YOUR SIDE. BY THIS TIME WE HAD FULLY REVIEWED THE DATA SUBMITTED BY YOUR GOVERNMENT ON TEN FIRMS ACCOUNTING FOR 72 PERCENT OF BRAZILIAN EXPORTS, BUT NO FINAL DETERMINATION HAD YET BEEN MADE. IN THAT MEETING THE BRAZILIAN SIDE AGAIN PRESSED FOR A SINGLE RATE OF 11 PERCENT. I REITERATED THE TREASURY POSITION ON RECAPTURE, WHICH HAS BEEN CONSISTENT SINCE FIRST EXPRESSED TO YOU IN THE COURSE OF THE FOOTWEAR INQUIRY, IN 1974. AT THIS TIME MESSRS.

SCHIEVELBEIN AND HEMMENDINGER WERE GIVEN THE TREASURY CALCULATIONS BASED ON THE DATA YOU SUPPLIED ON THE TEN FIRMS. THESE CALCULATIONS WERE MADE IN EXACTLY THE SAME MANNER AS IN THE FOOTWEAR CASE. THEY SHOWED THAT THE TOTAL BENEFITS RECEIVED, FOR THE TEN FIRMS, RANGED FROM 7.82 PERCENT TO 15.64 PERCENT. THE WEIGHTED AVERAGE FOR THE TEN FIRMS WAS APPROXIMATELY 13 PERCENT. ON THE OTHER HAND, FOUR OF THE TEN FIRMS WHICH REPRESENTED 68.7 PERCENT OF EXPORTS WERE ABOVE THE 13 PERCENT FIGURE. I EXPLAINED THAT WE DID NOT BELIEVE WE COULD USE AN AVERAGE AS IT WOULD HAVE RESULTED IN A RATE LOWER THAN THE BENEFITS ACTUALLY RECEIVED ON A SUBSTANTIAL PORTION OF EXPORTS. TO ARRIVE AT THE 14 PERCENT FIGURE, WE EXCLUDED THE FIRM WHICH RECEIVED 15.64 PERCENT IN INCENTIVES AS AN ABERRATION AND TOOK THE WEIGHTED AVERAGE OF THE THREE FIRMS WHICH TOGETHER ACCOUNTED FOR 66.2 PERCENT OF TOTAL EXPORTS. NO DETERMINATION HAD BEEN YET MADE, BUT OUR THINKING WAS FULLY EXPLAINED TO THE BRAZILIAN SIDE AT THIS MEETING.

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OUR FINAL DETERMINATION WAS, OF COURSE, CONSISTENT WITH THESE CALCULATIONS FIRST GIVEN TO YOUR GOVERNMENT ON DEC. 5. THE METHOD OF ACHIEVING THEM WAS IDENTICAL TO THAT USED IN THE FOOTWEAR CASE. UNLIKE THE FOOTWEAR FIGURES, HOWEVER, THERE WAS NO DISTINCT QUOTE BREAK POINT END QUOTE IN THE AMOUNT OF INCENTIVES RECEIVED AMONG THE FIRMS. WE THEREFORE AGREED, AS YOU REQUESTED, THAT A SINGLE RATE WAS APPROPRIATE AND DID NOT USE THE TWO RATE SCHEME USED IN FOOTWEAR. I MIGHT POINT OUT, BY THE WAY, THAT THOSE TWO FOOTWEAR RATES WERE NOT WEIGHTED AVERAGES WITHIN EACH GROUPING, BUT RATHER WERE THE HIGHEST ACTUAL RATES WITHIN EACH GROUP. THE HIGHEST ACTUAL RATE IN THE HANDBAG DECISION WAS 15.64 PERCENT, HIGHER THAN THE 14 PERCENT IMPOSED.

ADDITIONALLY, WHILE WE DID NOT ACCEPT THE RECAPTURE AGREEMENT, WE HAVE CALCULATED THE INCENTIVES RECEIVED FOR THE INCOME TAX EXEMPTION IN SUCH A MANNER AS TO GIVE THE MAXIMUM BENEFIT TO THE EXPORTERS. IN YOUR SUBMISSIONS IN BOTH FOOTWEAR AND HANDBAGS, THE INCOME TAX BENEFIT WAS CALCULATED ON THE BASIS OF TOTAL INCOME RECEIVED, INCLUDING THE IPI AND ICM INCENTIVES. WE CHARACTERIZED THE INCOME DUE TO THE IPI AND ICM INCENTIVES TO BE QUOTE FALSE PROFITS END QUOTE. ACCORDINGLY THE INCOME TAX BENEFIT WAS CALCULATED ONLY ON THE BASIS OF ACTUAL PROFITS. TO THE EXTENT TO WHICH QUOTE FALSE PROFITS END QUOTE EXCEED ACTUAL PROFITS, WHICH WAS THE CASE WITH NINE OF THE TEN HANDBAG FIRMS ON WHICH WE HAD DATA, ZERO INCENTIVE WAS ADDED TO THE TOTAL BENEFITS RECEIVED.

IN ACCORDANCE WITH OUR STANDARD PRACTICE IN COUNTERVAILING DUTY CASES, THOSE HANDBAG FIRMS WHICH ACTUALLY RECEIVE LESS THAN THE DECLARED RATE IN INCENTIVES MAY REQUEST THAT LIQUIDATION OF ENTRIES BE SUSPENDED AND PROVIDE THE NECESSARY INFORMATION AT THE END OF EACH YEAR TO HAVE THE ENTRIES LIQUIDATED AT THE EXACT FIGURE. LET ME EMPHASIZE THAT THIS PROCEDURE IS THE ROUTINE MANNER FOR HANDLING SUCH SITUATIONS. AT PRESENT THERE ARE SIX OUTSTANDING COUNTERVAILING ORDERS IN WHICH ALL LIQUIDATIONS ARE SUSPENDED PENDING SUBMISSION OF CLARIFYING LIMITED OFFICIAL USE

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INFORMATION. IN THE FOOTWEAR CASE, IN PART AS A CONCESSION TO YOUR GOVERNMENT, AND IN PART BECAUSE OF THE PECULIARITIES OF THE FOOTWEAR SITUATION WHICH ARE NOT PRESENT IN THIS CASE, WE DEVIATED FROM NORMAL PROCEDURE. THAT PROCEDURE WOULD NOT BE APPROPRIATE HERE.

I WOULD HOPE THAT WHILE THERE MAY BE DIFFERENCES OF OPINION BETWEEN US CONCERNING THE CALCULATIONS, THAT WE DO NOT LET THESE DIFFERENCES INTERFERE WITH THE COOPERATION WHICH HAS ALLOWED BOTH OF OUR DEPARTMENTS TO QUOTE MANAGE END QUOTE OUR PROBLEM IN A VERY DIFFICULT SITUATION. AS SECRETARY SIMON IN HIS CORRESPONDENCE TO MINISTER SIMONSEN HAS POINTED OUT THE VARIOUS BRAZILIAN EXPORT INCENTIVES ARE COUNTERVAILABLE UNDER OUR LAW AND AS SUCH INCREASE THE LIKELIHOOD THAT PETITIONS FOR RELIEF WILL BE FILED. IN FACT ANOTHER SUCH PETITION, CONCERNING SCISSORS AND SHEARS, HAS BEEN RECEIVED WITHIN THE PAST WEEK OR SO. IN VIEW OF SECRETARY SIMON'S IMPENDING VISIT TO BRAZIL IT HAS OCCURRED TO US THAT A PRELIMINARY MEETING HERE IN WASHINGTON BETWEEN YOU AND YOUR STAFF, AND ASSISTANT SECRETARY MACDONALD (WHO WILL BE ACCOMPANYING SECRETARY SIMON) AND MYSELF AND MY

STAFF MIGHT BE WORTHWHILE. PERHAPS SUCH A MEETING COULD  
TAKE PLACE IN CONJUNCTION WITH THE MARCH 11-12 MEETING  
OF THE U.S.-BRAZILIAN TRADE CONSULTATIVE SUB-GROUP. AT  
SUCH A MEETING WE MIGHT GIVE ANY FURTHER EXPLANATION OF  
PAST CASES WHICH YOU DESIRE, AND DISCUSS THE BRAZILIAN  
EXPORT INCENTIVE SYSTEM IN GENERAL AS IT RELATES TO OUR  
COUNTERVAILING DUTY LAW.

PLEASE ACCEPT MY WARMEST PERSONAL REGARDS. I LOOK FOR-  
WARD TO HEARING FROM YOU AT AN EARLY DATE REGARDING THE  
FEASIBILITY OF SUCH A MEETING.

SINCERELY YOURS,

PETER O. SUCHMAN END TEXT.

2. EMBASSY ISREQUESTEDTO PROVIDE TEXT OF LETTER TO  
DORNELLES. KISSINGER

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## Message Attributes

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